human agency, or if happening through human agency, an event which, under the circumstances, is unusual and not expected to the person to whom it happens." *McGlinchey* v. *Fidelity, etc., Co.*, 80 Me. 251, 14 Atl. 13, 6 Am. St. Rep. 190; *Carnes* v. *Iowa, etc., Ass'n*, 106 Iowa 281, 76 N. W. 683, 68 Am. St. Rep. 306. Under this definition, and it is generally so held, an injury intentionally inflicted upon the insured by a third person is an accident. *Button* v. *American, etc., Ass'n*, 92 Wis. 83, 65 N. W. 861, 53 Am. St. Rep. 900; *Richards* v. *Travelers' Ins. Co.*, 89 Cal. 170, 26 Pac. 762, 23 Am. St. Rep. 455. Thus an accident may include: An assault with a firearm not resulting in death. *Button* v. *American, etc., Ass'n, supra.* Hanging at the hands of a mob. *Fidelity, etc., Co.*, v. *Johnson*, 72 Miss. 333, 17 So. 2, 30 L. R. A. 206. The waylaying and assassination of the insured for purpose of robbery. *Hutchcraft* v. *Travelers' Ins. Co.*, 87 Ky. 300, 8 S. W. 570, 12 Am. St. Rep. 484. And the murder of the insured. *American Accident Co.* v. *Carson*, 99 Ky. 441, 36 S. W. 169, 59 Am. St. Rep. 473, 34 L. R. A. 301.

That is not an accident which is the natural and probable consequence of an intentional act upon the part of the insured. *Feder* v. *Iowa, etc., Ass'n*, 107 Iowa 538, 78 N. W. 252, 70 Am. St. Rep. 212; *Hastings* v. *Travelers' Ins. Co.*, 190 Fed. 258. Consequently when there is a fight in which the injured party is the aggressor, the injury is not accidental. *Taliaferro* v. *Travelers' Protective Ass'n*, 80 Fed. 368. But admitting the injured party to be the aggressor, if the injury sustained is not the natural and probable consequence which would ordinarily result, then the injury is an accident. *Lovelace* v. *Travelers' Protective Ass'n*, 126 Mo. 104, 28 S. W. 877, 30 L. R. A. 209, 47 Am. St. Rep. 638; *Union Casualty Co.* v. *Harroll*, 98 Tenn. 591, 40 S. W. 1080, 60 Am. St. Rep. 873. As for example, when the insured advanced upon another, intending to start a fist fight without knowing that the other was armed with a deadly weapon, but the other was so armed and killed the aggressor with a revolver, then the insured's death was an accident. *Union Casualty Co.* v. *Harroll, supra.* An injury inflicted upon one involuntarily taking part in an affray is classed as an accident. *Supreme Council* v. *Garrigus*, 104 Ind. 133, 3 N. E. 818, 54 Am. Rep. 298. And upon principle, an injury received by one acting purely in self-defense is an accident. See *Gresham* v. *Equitable, etc., Ins. Co.*, 87 Ga. 497, 13 S. E. 752, 27 Am. St. Rep. 263, 13 L. R. A. 838. The better rule is that the burden of proof is upon the injured party, the plaintiff, to prove that the injury suffered was accidental. *Preferred Acc. Ins. Co.* v. *Fielding*, 35 Col. 19, 83 Pac. 1013; *Taylor* v. *Pacific, etc., Ins. Co.*, 110 Iowa 621, 82 N. W. 326.

For a discussion of Recovery for Injuries or Death Effected through External, Violent, and Accidental Means, see 2 VA. LAW REV. 178.

INSURANCE—"ADDITIONS" WITHIN A FIRE POLICY—MAY BE SEPARATE FROM MAIN BUILDING.—The defendant corporation issued a standard policy of fire insurance on the personal property of the plaintiff, "All while contained in (sic) on the building extensions and additions thereto situate No. 1135 Tremont Avenue, N. Y. C." At the time of the issuance of the policy, and soon afterwards to the knowledge of an agent of the

defendant, part of the insured property of the plaintiff was contained in a barn-like frame structure fourteen feet away from and with no physical connection to the main building, situated on the same lot, with a door, which was kept locked, leading to another street, but access being had only through the main building. After a loss by fire to the property contaned in this structure, the plaintiff brought an action to recover on the policy. *Held*, judgment for plaintiff. *Gertner* v. *Glens Falls Ins. Co.*, 184 N. Y. Supp. 669.

The court here followed the rule laid down in New York, which has been generally followed in the more recent cases in most jurisdictions. Especially strong in this connection, is a very recent case in which the word "extensions" describes the location of the property, with the same result as in the case at bar. *Alterman* v. *Home Ins. Co.*, 183 N. Y. Supp. 62. The interpretation most favorable to the interests of the insured is adopted as the controlling factor in the decision in many other cases. *Arlington* v. *Colonial Assurance Co.*, 180 N. Y. 337, 73 N. E. 34.

It has been stated that the authorities are not universal in holding that actual physical attachment of the "addition" is not necessary, and to be an "addition", there must be some type of building physically appended to the main building. 19 CYC. 665. A close examination of the authorities will reveal that the same principle as to what constitutes an "addition" dominates the courts in the several States; the apparent divergence arises from different sets of facts and loose general expressions in the opinions, which are *dicta*. *Agnew* v. *Sun Ins. Office*, 167 Wis. 456, 167 N. W. 829; *Peoria Sugar Refining Co.* v. *Peoples Fire Ins. Co.*, 24 Fed. 773. This standard has been discarded by other courts, and they have adopted the more logical test of "connection by use". *Ideal Pump & Mfg. Co.* v. *American Central Ins. Co.*, 167 Mo. App. 566, 152 S. W. 408; *Bickford* v. *Aetna Ins. Co.*, 101 Me. 124, 63 Atl. 552; RICHARDS, INSURANCE, 3rd ed., § 233.

The court will not treat the word "addition" as mere surplusage, but will give effect to it by applying the term to any building reasonably answering to the description, if such application is not inconsistent with other provisions in the policy, or clearly opposed to the surrounding facts and circumstances existing at the time of the execution of the contract. *Phenix Ins. Co.* v. *Martin* (Miss.), 16 So. 417; *Shepard* v. *Germania Fire Ins. Co.*, 165 Mich. 172, 130 N. W. 626; *Alterman* v. *Home Ins. Co., supra*. The policy is interpreted to give effect to the intention of the parties, as ascertained from the language used in the instrument as a whole, aided by such other extrinsic evidence of the facts and circumstances surrounding the transaction as is necessary. *Marsh* v. *Concord, etc., Ins. Co.*, 71 N. H. 253, 51 Atl. 898. In fact, a rigid adherence to the letter often leads to erroneous results, and misinterprets the meaning of the parties. *Reed* v. *Insurance Co.*, 95 U. S. 23. The definitions of "additions" given by the dictionaries afford very little assistance in determining the application of the term to a particular structure. *Bickford* v. *Aetna Ins. Co., supra.*

Note that in the instant case the words of description were "additions and extensions". No other examples of this compound form of descrip-

tion have been found to have been litigated. A recent case in the same jurisdiction held that the term "extensions" did not cover a frame enclosure forty feet to the rear of the main building which was of brick, and not physically connected therewith; and due to the fact that there was no other brick building to which the frame enclosure could be an "extension", no recovery was allowed for the loss by fire of personalty kept therein. *Acione* v. *Commercial Union Assurance Co.*, 169 N. Y. Supp. 908. The court very properly distinguished this case from the case at bar.

Also in the instant case the insurance company, through its agent, examined the premises, and had the opportunity of changing the form of the policy, if it were considered so essential. When such a thing is not done, the company is considered as bound by its contract, as the company itself prepared it. *LeGendre* v. *Scottish Union & National Ins. Co.*, 88 N. Y. Supp. 1012.

SALES—MANUFACTURED GOODS—IMPLIED WARRANTY BY DEALER.—The defendant, an automobile dealer, agreed to supply the plaintiff with a car of a certain type. At the time of the contract, a car similar to the one to be supplied was in the showroom of the dealer and was examined by the plaintiff. The original contract was not for this identical car. Later the dealer supplied the same car as a fulfillment of the contract, and it was accepted by the complainant. No express warranty was given. After using the car for some time, the plaintiff found it to be defective, and sued on an implied warranty of quality. *Held*, plaintiff cannot recover. *Hoyt* v. *Hainsworth Motor Co.* (Wash.), 192 Pac. 918.

The general rule in regard to sales is that the buyer, in the absence of fraud, purchases at his own risk unless the seller has given an express warranty or unless a warranty be implied from the nature and circumstances of the sale. *Barnard* v. *Kellogg*, 10 Wall. 383; *Winsor* v. *Lombard*, 18 Pick. (Mass.) 57; *Hargous* v. *Stone*, 5 N. Y. 73.

In cases like the one under consideration, the courts unanimously hold that the manufacturer of goods is liable under an implied warranty for latent defects not discoverable by ordinary examination. *Nixa Canning Co.* v. *Lehmann-Higginson Grocery Co.*, 70 Kan. 664, 79 Pac. 141, 70 L. R. A. 653; *Hoe* v. *Sanborn*, 21 N. Y. 552, 78 Am. Dec. 163. And where a manufacturer or dealer contracts to supply an article which he manufactures or produces or in which he deals, to be applied to a certain purpose, so that the buyer necessarily trusts to the skill or judgment of the manufacturer or dealer, there is an implied warranty that it shall be reasonably fit for the purpose to which it is to be applied. *Dushane* v. *Benedict*, 120 U. S. 630; *Shaw* v. *Smith*, 45 Kan. 334, 25 Pac. 886, 11 L. R. A. 681; *Little* v. *Van Syckle*, 115 Mich. 480, 73 N. W. 554. But where an article of known manufacture is made by one not the vendor, and the vendee knows this fact, there is no implied warranty by the vendor against latent defects. *American, etc., Mfg. Co.* v. *Brady*, 38 N. Y. Supp. 545; *Gardner* v. *Winter*, 117 Ky. 382, 78 S. W. 143, 63 L. R. A. 647. The purchaser has the same means of knowledge of these subjects as the dealer. *Reynolds* v. *General Electric Co.*, 141 Fed. 551; *American, etc., Mfg. Co.*, v. *Brady, supra.*